

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 15, 2002

IN RE:

GENERIC DOCKET TO CONSIDER
TECHNOLOGY ADVANCES

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DOCKET NO.
02-00434

ORDER DENYING MOTION FOR RECONSIDERATION

This docket came before the Pre-Hearing Officer for consideration of the *Motion for Reconsideration* filed by AT&T Communications of the South Central States, LLC; TCG Midsouth, Inc.; Cinergy Communications Company; DIECA Communications, Inc. d/b/a Covad Communications Company; ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom; MCI WorldCom Communications, Inc.; MCImetro Access Transmission Services, LLC; Brooks Fiber Communications of Tennessee, Inc.; Network Telephone Corporation; NewSouth Communications Corp., and Birch Telecom of the South, Inc. (collectively "the CLECs") on June 28, 2002 and the *Response of BellSouth Telecommunications, Inc. to CLECs' Motion for Reconsideration* filed by BellSouth Telecommunications, Inc. ("BellSouth") on July 12, 2002.

On April 26, 2002, the Pre-Hearing Officer issued a *Notice of Filing* directing interested persons and entities who wished to file comments on the scope of this docket to do so by May 24, 2002. The notice further instructed:

Such comments should contain: (1) a list of those Unbundled Network Element ("UNE") rates from Docket No. 97-01262, *In re: Petition of BellSouth Telecommunications Inc. to Convene a Contested Case to Establish "Permanent Prices" for Interconnection and Unbundled Network Elements*, requiring review as a result of technology advances and (2) a list of UNEs for which an initial rate

is needed as a result of technology advances. Each item listed shall include a detailed description of the technology advance impacting that item.

As required by the notice, United Telephone-Southeast, Inc. and Sprint Communications Company, L.P. (collectively "Sprint/United"), BellSouth, and the CLECs filed comments on May 24, 2002. Sprint/United requested that this Docket include a determination of "how competitive LECs might offer advanced services where fiber optic cable is present in the local loop," specifically, regarding the "functionality provided by dual purpose line cards" and whether such functionality should be considered a UNE.¹ BellSouth simply stated that no UNE rates from Docket No. 97-01262 "require review as a result of technology advances."² The CLECs asserted that, because of direct and indirect technology advances, this Docket should include recurring and nonrecurring rates for all "current UNEs," of which they attached a list, as well as all new UNEs and UNE combinations.³

In an order entered on June 13, 2002, the Pre-Hearing Officer found:

[A]dditional argument is needed to aid the Authority in developing a comprehensive list of the UNE rates to be fixed in this docket. Specifically, the Pre-Hearing Officer notes that the Consolidated CLECs' arguments focus on advances impacting loops and switching, yet their list includes elements other than loops and switching. Therefore, it would be beneficial if the Consolidated CLECs were to supplement their comments by providing a detailed description of the technology advance impacting each item listed in the Attachment to the *Consolidated CLEC Comments* and describe in detail how that advance has reduced the cost of the item.⁴

Based on these findings the Pre-Hearing Officer ordered the CLECs to supplement the *Consolidated CLEC Comments* within thirty (30) days of the filing of the order and directed that responsive comments should be filed within forty-five (45) days of the filing of the order.

¹ See *Comments of United Telephone-Southeast, Inc. and Sprint Communications Company L.P.* (May 24, 2002).

² See *Comments of BellSouth Telecommunications, Inc.* (May 24, 2002).

³ See *Consolidated CLEC Comments*, pp. 2-3 (May 24, 2002).

⁴ See *Order*, pp. 3-4 (Jun. 13, 2002).

Thereafter, on June 28, 2002, the CLECs filed the *Motion for Reconsideration* seeking reconsideration of the June 13, 2002 Order. The CLECs assert that the Tennessee Regulatory Authority (“Authority”) intended this docket to address the BellSouth Telecommunications Loop Model (“BSTLM”) and other technology advances.⁵ The CLECs further assert that many UNE costs have decreased since the Authority last examined UNE rates either because of technology advances or modified methods for determining costs.⁶ The CLECs also contend that the June 13, 2002 Order requires them to prematurely prove their case and that they have provided sufficient information.⁷

BellSouth responded to the *Motion for Reconsideration* on July 12, 2002. BellSouth asserts that the purpose of this docket is not to consider the BSTLM, but to consider whether technology advances have taken place that warrant revisiting UNE rates without restarting the cost modeling process.⁸ BellSouth contends that the directives in the June 13, 2002 Order were a reasonable exercise of the Pre-Hearing Officer’s authority to determine the scope of this docket.⁹

On March 13, 2002, the Pre-Hearing Officer entered a *Report and Recommendation* in Docket No. 01-00339 that resulted in the subject of technology advances being addressed in a docket apart from the subject of geographic deaveraging. In that *Report and Recommendation*, the Pre-Hearing Officer described the purpose of this Docket as establishing “rates for those BellSouth UNEs on which technology advances have had an impact.”¹⁰ No objections to the *Report and Recommendation* were filed. At the April 16, 2002 Authority Conference, the

⁵ See *Motion for Reconsideration*, p. 2 (Jul. 15, 2002).

⁶ See *id.* at 3.

⁷ See *id.*

⁸ See *Response of BellSouth Telecommunications, Inc. to CLECs’ Motion for Reconsideration*, pp. 2-4 (Jul. 12, 2002).

⁹ See *id.* at 6.

¹⁰ In *re: Generic Docket to Consider Geographic Deaveraging*, Docket No. 01-00339, *Report and Recommendation*, p. 2 (Mar. 13, 2002).

Directors voted to accept the *Report and Recommendation* without modification and designated General Counsel or his designee to serve as a Pre-Hearing Officer to determine the scope of docket numbers 01-00339 and 02-00434.¹¹

Based on the purpose of this Docket as memorialized by the Pre-Hearing Officer in the *Report and Recommendation* and the directive of the Authority that the Pre-Hearing Officer determine the scope of this Docket, the Pre-Hearing Officer issued the April 26, 2002 notice requesting comments from interested persons and entities. The purpose of this docket is not to simply evaluate all UNE rates without a determination of whether those UNEs have been impacted by technology advances. If this were the case, there would be no need for the Authority to direct the Pre-Hearing Officer to determine the scope of this Docket.

The determination of the scope of this Docket is dependent on which UNEs will be evaluated. Because the purpose of this Docket is to evaluate those UNEs impacted by technology advances, it is necessary to determine which UNEs have been impacted by technology advances. The Pre-Hearing Officer finds that the June 13, 2002 Order reasonably requested that the CLECs provide additional information so that the scope of the Docket can be determined. Given the foregoing, the Pre-Hearing Officer finds that the *Motion for Reconsideration* should be denied and the CLECs permitted an additional fifteen (15) days to supplement their comments of May 24, 2002.

IT IS THEREFORE ORDERED THAT:

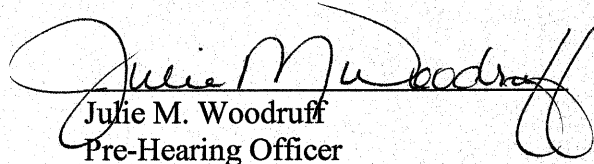
1) The *Motion for Reconsideration* filed on June 28, 2002 by AT&T Communications of the South Central States, LLC; TCG Midsouth, Inc.; Cinergy Communications Company; DIECA Communications, Inc. d/b/a Covad Communications Company; ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom; MCI WorldCom

¹¹ See *id.* Order Accepting Report and Recommendation (May 13, 2002).

Communications, Inc.; MCImetro Access Transmission Services, LLC; Brooks Fiber Communications of Tennessee, Inc.; Network Telephone Corporation; NewSouth Communications Corp.; Birch Telecom of the South, Inc. is denied.

2) The CLECs shall file supplemental comments, if any, within fifteen (15) days of the filing of this order.

3) Responsive comments shall be filed within thirty (30) days of the filing of this order.


Julie M. Woodruff
Pre-Hearing Officer